

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-080103
		C-080104
Plaintiff-Appellant,	:	TRIAL NO. C-05TRC-33477
vs.	:	
EAN SIEMER,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant the State of Ohio appeals from the judgment of the trial court dismissing a misdemeanor charge of operating a motor vehicle while intoxicated (“OVI”) against defendant-appellee Ean Siemer, for lack of a speedy trial under R.C. 2945.71. The dismissal followed this court’s remand in *State v. Siemer* (“Siemer I”).²

In *Siemer I*, the trial court had, during the second day of trial, dismissed the charges against Siemer for the state’s discovery violation. We held that the court had erred in dismissing the case because the state’s violation had not been willful or intentional, and Siemer’s constitutional rights “would still have been protected by a

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² 1st Dist. Nos. C-060604 and C-060605, 2007-Ohio-4600.

less severe sanction.”³ Consequently, we reversed and remanded the case to the trial court for further proceedings in accordance with our decision.⁴

On September 14, 2007, seven days after our remand, Siemer requested a hearing on his motion to suppress. On October 30, 2007, Siemer withdrew his motion and requested the case be sent to the assignment commissioner for a bench-trial date. The assignment commissioner scheduled the trial for January 15, 2008. On January 8, 2008, Siemer moved to dismiss the charges for a violation of his speedy-trial rights. The trial court held a hearing and granted Siemer’s motion to dismiss.

In its sole assignment of error, the state argues that the trial court erred when it dismissed the misdemeanor OVI offense against Siemer for want of a speedy trial under R.C. 2945.71. We agree.

The Ohio Supreme Court has held that “[i]n situations where the legislature has not expressed its intent for R.C. 2945.71 to apply, the time limitation for bringing a defendant to trial is governed by a reasonableness standard under the Sixth Amendment of the United States Constitution and Section 10, Article I of the Ohio Constitution.”⁵ In *State v. Fanning*, the court held that “[i]t is noteworthy that [R.C. 2945.71] does not include any reference whatever to retrials. The standard to be applied, therefore, is basically reasonableness under federal and state constitutions.”⁶

In this case, Siemer was originally brought to trial within the 90-day time frame under R.C. 2945.71. The trial court, however, erroneously dismissed the

³ Id. at ¶10

⁴ Id. at ¶11.

⁵ *State v. Hull*, 110 Ohio St.3d 183, 2006-Ohio-4252, 852 N.E.2d 706, ¶20.

⁶ (1982), 1 Ohio St.3d 19, 21, 437 N.E.2d 583.

charges against Siemer in lieu of declaring a mistrial. Consequently, we cannot say that the delay occasioned by the state's appeal and our remand to the trial court was unreasonable. As a result, we sustain the state's sole assignment of error, reverse the judgment of the trial court, and remand this case with instructions for the court to overrule the motion to dismiss and for further proceedings consistent with this judgment entry and the law.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 25, 2009
per order of the Court _____.
Presiding Judge